

IMAGINE IF APPLE WERE A POWERLESS MUSLIM?

In a piece on the Apple case, Amy Davidson tried to imagine the unintended consequences of broadening the application of the All Writs Act in this case.

If a case involving a non-digital phone network could be applied to smartphones, what technologies might an Apple precedent be applied to, three or four decades from now? (The N.S.A. used, or rather promiscuously misused, another pen-register case from the same era to justify its bulk data collection.) It no longer becomes fanciful to wonder about what the F.B.I. might, for example, ask coders adept in whatever genetic-editing language emerges from the recent developments in CRISPR technology to do. But some of the alarming potential applications are low-tech, too. What if the government was trying to get information not out of a phone but out of a community? Could it require someone with distinct cultural or linguistic knowledge not only to give it information but to use that expertise to devise ways for it to infiltrate that community? Could an imam, for example, be asked not only to tell what he knows but to manufacture an informant?

This is the situation that Apple is in, and that all sorts of other companies and individuals could be in eventually. There are problems enough with the insistence on a back door for devices that will be sold not only in America but in countries with governments that feel less constrained by privacy concerns than ours does. And there are reasons to be cynical about technology companies that abuse private information in their own way, or that jump in to

protect not a principle but their brands. But the legal precedent that may be set here matters. By using All Writs, the government is attempting to circumvent the constitutionally serious character of the many questions about encryption and privacy. It is demanding, in effect, that the courts build a back door to the back-door debate.

She raises fair points.

Except when I read them, I thought instead of the demands FBI has already made.

FBI demanded that Lavabit turn over a key protecting all of its users to try to get to Edward Snowden, which led Ladar Levison to shut down the business, well before it got to the point where Ted Olson (who's now helping Apple make its case, and presumably will all the way to the Supreme Court) would help him argue a legal case.

More directly on point to Davidson's scenarios, there are numerous reports of FBI creating some artificial means of coercion – often having to do with immigration – that effectively force speech of a certain kind. That's not far off Davidson's example of an Imam being forced to inform (which, especially given the use of Section 215 to collect data to identify informants, might involve coercion of a different kind).

Obviously, Apple is huge and rich and powerful so it has the ability to fight such coercion (or just leave the country).

But the comparison is especially apt, I think, because it speaks to why the FBI might be willing to make such breath-taking demands from Apple. It's used to demanding coercion, whether from smaller ISPs or Imams or Muslim immigrants. And because those people have no power to fight back, FBI has grown used to such ability to coerce cooperation.